IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1120 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL FIRE AND GENERAL INSURANCE CO LTD - Appellant(s)
Versus
R G THADANI & 1 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1,
MR JC SHETH for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/07/2006

ORAL JUDGMENT

By way of this Appeal, the appellant herein, original-plaintiff, has challenged the legality and validity of the judgment and decree

dated 27th October 1986 passed by the learned Judge, City Civil Court at Ahmedabad in dismissing the Civil Suit No. 1881 of 1982.

2. The appellant original-plaintiff filed Civil Suit No. 1881 of 1982 before the City Civil Court at Ahmedabad claiming money decree for Rs. 23,000 with 6% interest. In the Plaint, it was averred that the defendant No.1 had consigned two G.P. Cases of Polyester Cloth worth Rs. 22,047.73 ps, from Ahmedabad to Orai under parcel way bill No. 478894 dated 22.2.1979 and the said goods were covered by the Insurance Policy No. 00078 of the appellant Insurance Company. Thus, the original-defendant No.1 was the consignor as well as the owner of the suit consignment and the defendant No.2 as a common carrier was bound to deliver the goods of the said consignment to the consignee at its destination and the said goods were lost in transit and therefore for the said loss the suit was filed.

3. The Suit was resisted by the defendant Union of India, Railway Administration by taking shelter under Section 77(B) of the Indian Railways Act and repudiated the claim on the ground that the Railway Administration was exonerated from liability under Section 77(B) of the Indian Railways Act. On appreciation of evidence and considering the provision of Section 77-B of the Indian Railways Act, the learned Trial Court holding that the Railway Administration is exonerated from the liability under Section 77(B) of the Indian Railways Act and it can be a case of loss though termed non-delivery, dismissed the suit. Being aggrieved and dissatisfied with the same, the appellant, original-plaintiff has preferred the present First Appeal.

4. Shri Devang Vyas, learned advocate appearing on behalf of the appellant has submitted that the issue is now covered by the

judgment of this Court in the case of ***Union of India & Anr. Vs. M/s. K. Mansukhram & Sons,*** reported in ***20 GLR Page 333***. He has relied upon paragraphs 17 and 18 of the said judgment, wherein, relying upon a Judgment of the Madras High Court, it is held that when it is a case of non-delivery of the consignment, the Railway authorities cannot escape from the liability, and Section 77(B) of the Railways Act would not be attracted. He has therefore requested to allow the present Appeal.

5. Learned Advocate appearing on behalf of the Railway Administration is not present, and, this being an Appeal of 19876, this Court has proceeded further with the Appeal ex-parte on merits.

6. On going through the judgment and decree passed by the learned Trial Court, it appears that for the purposes of dismissal of the suit,

the learned Trial Court has wrongly relied upon Section 77(B) of the Indian Railways Act and has held that the Railway Authorities have been exonerated from the liability as non-delivery of the goods can be equated with the loss as envisaged under Section 77(B) of the Act. This question is now already covered by the decision of this Court in the case of ***Union of India & Anr. Vs. M/s. K. Mansukhram & Sons*** *(supra)* wherein, this Court, considering the provisions o f Section 77(B) of the Indian Railways Act, has held that non-delivery of the consignment/goods cannot be equated with the loss or damage to the goods and therefore when it is a case of non-delivery of the goods, Section 77(B) of the Indian Railways Act would not be attracted and the Railway authorities would not be exonerated from the liability. In view of the ruling of this Court against the Railway authorities considering the provisions of Section 77(B) of the Indian Railways Act, the present Appeal is

required to be allowed and the judgment and decree, passed by the learned Judge, City Civil Court at Ahmedabad, dismissing the Suit, is required to be set aside and the decree is to be passed in favour of the appellant.

7. For the reasons stated above, the Appeal succeeds. The Judgment and Decree dated 27th October 1986 passed by the learned Judge, City Civil Court at Ahmedabad, in Civil Suit No. 1881 of 1982, in dismissing the said Suit is hereby quashed and set aside and the Civil Suit No. 1881 of 1982 is hereby allowed and it is hereby held that the appellant is entitled to the amount as prayed for in Civil Suit No. 1881 of 1982. The decree be drawn accordingly. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.